



October 6, 2023

VIA ECF

The Honorable Sarah Netburn
S.D.N.Y. Thurgood Marshall Courthouse
New York, NY 10007

Re: *Lynne Freeman v. Tracy Deebs-Elkenaney et. al.*, 1:22 Civ 02435 (LLS)(SN)

Dear Judge Netburn:

Defendants respectfully write to set forth their viewpoint on the schedule for summary judgment and *Daubert* briefing. The parties met and conferred pursuant to Your Honor's October 3, 2023 Order (ECF No. 262), but did not reach an agreement on the schedule, and agreed to each submit letters on the issue today. Plaintiff's proposal (which we expect will be fully set forth in her letter) seeks to extend summary judgment briefing through April 18, 2024.

While we accept that Your Honor granted Plaintiff's request for a 30-day extension on her opening briefs, we respectfully do not believe that Your Honor envisioned that this would result in a schedule that prolongs summary judgment through mid-April. Such a schedule would allow Plaintiff to leverage roughly a week of lost work due to covid into a three-month delay on summary judgment, during which time our clients continue to be harmed by increased legal fees and negative publicity. Our clients have been eager to have the Court rule on substantial similarity since the outset of this case in March 2022, and were devastated to learn that this could now be delayed several more months, especially after the delays over the summer. Several of our clients wished to express this in their own words, and we respectfully attach their statements as Exhibits A and B.¹

We accordingly urge Your Honor to reconsider the grant of Plaintiff's requested extension and reinstate the original briefing schedule with a 3-5 business day grace period to account for Mr. Doniger's illness. If Your Honor does not agree, we ask that you partially reconsider the extension and order the following modified schedule, which we believe is more reasonable than Plaintiff's proposal:

- Plaintiff's opening SJ and *Daubert* briefs: Nov. 13 (previously Oct. 20)
- Defendants' opening and opposition SJ/*Daubert* briefs: Dec. 22 (previously Nov. 22)
- Plaintiff's SJ opposition/reply and *Daubert* opposition: Feb. 2 (previously Dec. 22)
- Defendants' SJ reply: March 1 (previously Jan. 19)

While the above proposal would give Plaintiff a slightly shorter extension on her opening briefs than she requested, this would still be fair and more than enough time. After all, Plaintiff did not need to provide rebuttal expert reports in August and chose not to take any expert depositions in September, and accordingly has had since July 27 to work on her opening briefs.² Otherwise,

¹ Entangled president Elizabeth Pelletier was unable to provide a statement under the timeline needed for this submission but conveyed that she echoes the sentiments of Tracy Wolff and Emily Kim.

² Defendants met their deadlines to serve expert rebuttal reports by August 31 and complete expert depositions by September 29 under the existing schedule.

our proposal generally gives the parties six weeks for their briefing, which we feel is adequate and consistent with the carefully constructed schedule Your Honor initially provided on July 27.

To the extent Plaintiff would argue that *Defendants* are responsible for delaying summary judgment, that would be baseless. Defendants sought an expedited summary judgment ruling over the summer, which is the opposite of an intention to delay summary judgment. We then requested the bare minimum time needed to complete expert discovery in response to Plaintiff's disclosure of six liability experts in a copyright case involving YA books, and worked diligently to meet those deadlines. Defendants' position has been consistent from the outset of this case: a ruling on substantial similarity will resolve the copyright claim and that should occur as swiftly as possible.

Finally, in the event the Court strikes a compromise between the parties' proposed schedules, we respectfully request not to have our briefs due between Christmas and New Years or during the first week of January.

Thank you for your attention to these issues.

Respectfully submitted,

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